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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDANT COUNTRIES AND TERRITORIES

Extrajudicial, summary or arbitrary executions

Report of the Special Rapporteur, Mr. Bacre Waly Ndiaye, submitted pursuant to Commission on Human Rights resolution 1997/61

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Introduction

1. This report is submitted pursuant to Commission on Human Rights resolution 1997/61 of 16 April 1997 entitled "Extrajudicial, summary or arbitrary executions". It is the sixth report submitted to the Commission on Human Rights by Bacre Waly Ndiaye and the fifteenth submitted to the Commission since the mandate on "Summary and arbitrary executions" was established by Economic and Social Council resolution 1982/35 of 7 May 1982.

2. The report, which covers communications sent and received by the Special Rapporteur from 2 November 1996 to 31 October 1997, is divided into six chapters. In chapter I, the Special Rapporteur gives an interpretation of the mandate entrusted to him. In chapter II, the Special Rapporteur reports on the activities he has undertaken in the framework of his mandate during the period under review. Chapter III contains an overview of the various situations involving violations of the right to life relevant to his mandate. In chapter IV, the Special Rapporteur discusses the issues requiring his special attention while in chapter V, he presents those issues which are of special concern to him. Lastly, chapter VI contains the Special Rapporteur's concluding remarks and his recommendations aimed at ensuring more effective respect for the right to life.

3. The Special Rapporteur further presents three addenda to the present report. Addendum 1 describes 86 country situations, which include in summary form the information transmitted and received by the Special Rapporteur, including communications received from the Government, as well as the Special Rapporteur's observations where considered appropriate. Addendum 2 contains the report on the Special Rapporteur's visit to Sri Lanka from 25 August to 5 September 1997, and addendum 3 the report on his visit to the United States of America from 21 September to 8 October 1997.

4. The Special Rapporteur wishes to stress that the present report is only approximately indicative of the occurrence of violations of the right to life worldwide. This is mainly due to the fact that the report is exclusively based on information brought to the Special Rapporteur's attention. Moreover, the Special Rapporteur considered information regarding alleged violations of the right to life which occurred during 1995, 1996 and 1997.

I. THE MANDATE

A. Terms of reference

5. In resolution 1997/61, the Commission on Human Rights requested the Special Rapporteur to continue to examine situations of extrajudicial, summary or arbitrary executions, to respond effectively to information which comes before him and to enhance further his dialogue with Governments. The Commission also requested the Special Rapporteur to continue monitoring the implementation of existing international standards on safeguards and restrictions relating to the imposition of capital punishment, bearing in mind the comments made by the Human Rights Committee in its interpretation of article 6 of the International Covenant on Civil and Political Rights, as well as the Second Optional Protocol thereto.

6. In the same resolution, the Commission further requested the Special Rapporteur to apply a gender perspective in his work and to pay special attention to violations of the right to life of children, participants in demonstrations or other public manifestations, persons belonging to ethnic minorities and individuals carrying out peaceful activities in defence of human rights and fundamental freedoms.

7. In other resolutions adopted by the Commission on Human Rights at its fifty-third session, special rapporteurs were requested to pay particular attention to certain issues within the framework of their mandates. Those resolutions included: 1997/16 entitled "Rights of persons belonging to national or ethnic, religious and linguistic minorities"; 1997/27 entitled "Right to freedom of opinion and expression"; 1997/28 entitled "Hostage-taking"; 1997/39 entitled "Internally displaced persons"; 1997/42 entitled "Human rights and terrorism"; 1997/43 entitled "Integrating the human rights of women throughout the United Nations system"; 1997/44 entitled "The elimination of violence against women"; 1997/46 entitled "Advisory services, technical cooperation and the Voluntary Fund for Technical Cooperation in the Field of Human Rights"; 1997/56 entitled "Cooperation with representatives of United Nations human rights bodies"; 1997/69 entitled "Comprehensive implementation of and follow-up to the Vienna Declaration and Programme of Action"; 1997/75 entitled "Human rights and mass exoduses"; and 1997/78 entitled "Rights of the Child". In the implementation of his mandate, the Special Rapporteur took into consideration the requests made by the Commission on Human Rights in the aforementioned resolutions.

B. Violations of the right to life upon which the Special Rapporteur takes action

8. During the period under review, the Special Rapporteur acted in the following situations:

(a) Violations of the right to life in connection with the death penalty. The Special Rapporteur intervenes when capital punishment is imposed after an unfair trial or in the case of a breach of the right to appeal or the right to seek pardon or commutation of the sentence. The Special Rapporteur also undertakes action when capital punishment is imposed for crimes which cannot be considered "most serious crimes" as stipulated in article 6, paragraph 2, of the International Covenant on Civil and Political Rights. The Special Rapporteur may, moreover, intervene if the convicted person is a minor, mentally retarded or insane, a pregnant woman or a recent mother;

(b) Death threats and fear of imminent extrajudicial executions by State officials, paramilitary groups, private individuals or groups cooperating with or tolerated by the Government, as well as by unidentified persons who may be linked to the categories mentioned above;

(c) Deaths in custody owing to torture, neglect or the use of force, or life-threatening conditions of detention;

(d) Deaths due to the use of force by law enforcement officials, or persons acting in direct or indirect compliance with the State, when the use of force is inconsistent with the criteria of absolute necessity and proportionality;

(e) Deaths due to the attacks or killings by security forces of the State, or by paramilitary groups, death squads or other private forces cooperating with or tolerated by the State;

(f) Violations of the right to life during armed conflicts, especially of the civilian population and other non-combatants contrary to international humanitarian law;

(g) Expulsion, refoulement or return of persons to a country or a place where their lives are in danger, as well as the prevention of persons seeking asylum from leaving a country where their lives are in danger through the closure of national borders;

(h) Genocide;

(i) Deaths due to acts of omission on the part of the authorities, including mob killings. The Special Rapporteur may take action if the State fails to take positive measures of a preventive and protective nature necessary to ensure the right to life of any person under its jurisdiction;

(j) Breach of the obligation to investigate alleged violations of the right to life and to bring those responsible to justice;

(k) Breach of the obligation to provide adequate compensation to victims of violations of the right to life.

C. Legal framework

9. For an overview of the international legal standards by which the Special Rapporteur is guided in his work, he makes reference to his report to the Commission on Human Rights at its forty-ninth session (E/CN.4/1993/46, paras. 42-68).

D. Methods of work

10. For a description of his methods of work, the Special Rapporteur refers to his report to the Commission on Human Rights at its fiftieth session (E/CN.4/1994/7, paras. 13-67), as well as his subsequent reports to the Commission (E/CN.4/1995/61, paras. 9-11 and E/CN.4/1996/4, paras. 11-12).

II. ACTIVITIES

A. Consultations

11. The Special Rapporteur presented his report to the Commission on Human Rights at its fifty-third session in April 1997. In May, August and November/December 1997, the Special Rapporteur had consultations with staff assisting him at the Office of the United Nations High Commissioner for Human

Rights for the preparation of communications to Governments and for his reports to the Commission on Human Rights. Preceding the consultations in May, the Special Rapporteur attended a meeting of the committee responsible for the drafting of a Special Rapporteur's manual and the meeting of special rapporteurs/representatives, of experts and chairpersons of working groups. During these visits, the Special Rapporteur also met with the officer-in-charge of the Office of the High Commissioner and with the High Commissioner for Human Rights.

B. Communications

12. During the period under review, the Special Rapporteur transmitted 122 urgent appeals to the Governments of the following 44 countries: Albania (1), Angola (1), Argentina (2), Bahamas (1), Belarus (1), Bolivia (2), Brazil (4), Burundi (1), Central African Republic (1), Chad (1), Chile (1), China (1), Colombia (24), Costa Rica (1), Democratic Republic of the Congo (3), Egypt (1), Ethiopia (1), Gambia (1), Guatemala (8), Honduras (3), India (6), Iran (Islamic Republic of) (6), Iraq (3), Jamaica (1), Jordan (1), Kazakhstan (1), Malaysia (1), Malawi (1), Mexico (5), Panama (1), Peru (2), Philippines (3), Rwanda (1), Singapore (1), Swaziland (1), Turkey (3), Turkmenistan (3), Ukraine (2), United Arab Emirates (1), United Republic of Tanzania (2), United States of America (11), Yemen (1), Venezuela (1) and Viet Nam (1). He further sent urgent appeals to the Palestinian Authority (3) and the head of the Taliban Council (1). Among the urgent appeals sent by the Special Rapporteur, 12 were transmitted jointly with other experts of the Commission on Human Rights.

13. Urgent appeals were sent on behalf of 3,720 persons, of whom 168 were identified. Urgent appeals were also sent on behalf of the following groups of persons: detainees in Harerge province of Ethiopia; persons on trial for their participation in the 1994 genocide in Rwanda; the civilian population of north-east Choco in Colombia; members of the indigenous people Guarani-Kaiowá in Brazil; members of the Iraqi opposition in the town of Zakho in northern Iraq; witnesses of the incident which took place on 14 January 1997 in Cavaleiro in Brazil; suspects of theft in Chad; Burundi refugees in the United Republic of Tanzania; officials of the Swaziland Federation of Trade Unions and other trade union activists in Swaziland; inhabitants of El Sauce community in Guatemala; inhabitants of the Remedios, Yondo and Cantagallo municipalities in Colombia; civilians and those suspected to be members of armed opposition groups in Agartala and Khowai subdivisions in the State of Tripura, India; inhabitants of the municipality of El Carmen de Atrato in the department of Choco, Colombia; farmers participating in demonstrations in the regions of Guaviare, Caqueta and Putumayo, Colombia, as well as their representatives; the civilian population of El Carmen de Bolivar in Colombia; members and leaders of the Organización Campesina de la Sierra del Sur in Mexico; members of the Coordinación de Organismos No Gubiernamentales por la Paz in Mexico; Rwandese Hutu refugees in Angola; employees of the Granja Avicola Santa Clara in Colombia; employees of the Industria Harinera in Guatemala; civilian population in Urabá and inhabitants of Vigía del Fuerto, Bocas de Bojayá, Bellavista, Carillo, Mesopotamia, Bocas de Opogodó and Guamal in Colombia; members of the Centro de Investigación y Educatión Popular in Colombia; villagers from Yesilyurt, Turkey, who acted as plaintiffs and witnesses in a petition filed with the European Commission on Human Rights;

witnesses in the case of Sarwan Singh, India; personas municipales in the department of Antiquía, Colombia; persons in Uvira, Sud-Kivu, Democratic Republic of the Congo; 140 families of the indigenous Suminao clan in the Philippines.

14. In addition, the Special Rapporteur transmitted allegations regarding the violation of the right to life of more than 960 individuals to the Governments of the following 48 countries: Algeria, Argentina, Bahrain, Bolivia, Brazil, Burundi, Cambodia, Cameroon, Chad, China, Colombia, Cuba, Democratic Republic of the Congo, Ecuador, El Salvador, Ethiopia, Gambia, Georgia, Guatemala, Honduras, Indonesia and East Timor, India, Iran (Islamic Republic of), Iraq, Israel, Kenya, Lesotho, Malawi, Mexico, Myanmar, Nepal, Nigeria, Pakistan, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Romania, Spain, Sri Lanka, Tanzania, Thailand, Togo, Turkey, Tunisia, United Republic of Venezuela and Yemen. In addition, he sent allegations of violations of the right to life to the Palestinian Authority, the head of the Taliban Council and the leader of the Turkish Cypriot community.

15. Allegations of a general nature were transmitted to the Governments of Bolivia, Brazil, Cambodia, Colombia, El Salvador, Georgia, Guatemala, Mexico, Nepal, Pakistan, Papua New Guinea, Peru, Turkey, Venezuela and Yemen as well as to the Palestinian Authority and the head of the Taliban Council.

16. Follow-up communications were transmitted to the Governments of Algeria, Angola, Armenia, Bulgaria, Ethiopia, France, Germany, India, the Philippines and the United Kingdom of Great Britain and Northern Ireland, requesting further clarification in regard of individual allegations to which the Government had provided a reply.

17. During the period under review, that is from 2 November 1996 to 31 October 1997, the Governments of the following countries provided a reply to communications addressed to them during 1997 or during previous years: Angola, Belarus, Bahrain, Bolivia, Brazil, Bulgaria, Chile, China, Colombia, Costa Rica, Cuba, Egypt, El Salvador, Ethiopia, France, Gambia, Germany, Guatemala, Guyana, Honduras, India, Indonesia, Iran (Islamic Republic of), Iraq, Israel, Kenya, Malawi, Mexico, Myanmar, Nicaragua, Nigeria, Paraguay, Peru, Philippines, Russian Federation, Senegal, Singapore, Spain, Sri Lanka, Thailand, Turkey, Ukraine, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Uruguay and Venezuela. In addition, the Palestinian Authority and the Turkish Cypriot community provided replies.

18. The Special Rapporteur is concerned that the Governments of Cambodia, Papua New Guinea, Romania and Yemen have not replied to any of the communications transmitted by the Special Rapporteur during the past three years. Moreover, he regrets that the Governments of the Democratic Republic of the Congo, Nepal and Pakistan did not provide replies to communications sent during the past two years.

C. Visits

19. Pursuant to Commission on Human Rights resolution 1997/58, the Special Rapporteur on extrajudicial, summary or arbitrary executions, together with

the Special Rapporteur on the situation of human rights in Zaire and a member of the Working Group on Enforced or Involuntary Disappearances, went to Rwanda during the beginning of May with the objective of carrying out a joint mission to investigate allegations of massacres and other issues affecting human rights which had arisen from the situation prevailing in eastern Zaire since September 1996. The independent experts of the Commission on Human Rights were obliged to return to Geneva without having had the possibility to enter eastern Zaire (now Democratic Republic of the Congo) to conduct the requested investigations. The members of the joint mission presented a report to the General Assembly at its fifty-first session (A/51/942, annex) and its fifty-second session (A/52/496, annex).

20. In addition, the Special Rapporteur undertook a visit to Sri Lanka from 25 August to 5 September 1997 and to the United States of America from 21 September to 8 October 1997. The Special Rapporteur's reports on these missions containing his findings, conclusions and recommendations can be found in addenda 2 and 3 respectively to the present report.

21. Following a letter sent during 1996, the Special Rapporteur held a meeting with the Permanent Representative of Algeria to the United Nations Office at Geneva during the fifty-third session of the Commission on Human Rights, during which it was proposed that the Special Rapporteur conduct a visit to Algeria after the elections in June 1997. By letter dated 13 August 1997, the Special Rapporteur inquired whether such a visit could take place at the end of January or beginning of February 1998. In the absence of a reply, the Special Rapporteur reminded the Government of the proposed dates by letter dated 17 October 1997. A subsequent response by the Government as well as further consultations between the Special Rapporteur and representatives of the Government of Algeria indicated that an appropriate date for a visit by the Special Rapporteur jointly with the Special Rapporteur on the question of torture will be discussed and established during the fifty-fourth session of the Commission on Human Rights. During the period under review, the Special Rapporteur also reiterated his interest in visiting India and Turkey.

D. Other activities

22. During the period under review, the Special Rapporteur consulted regularly with non-governmental organizations and participated in meetings and conferences organized by Amnesty International (Brussels, 14 April 1997), the Association for the Prevention of Torture (Geneva, 30-31 May 1997), the International Council on Human Rights Policy (Cairo, 25-30 June 1997) and the International Human Rights Council (New York, 21-23 October 1997). The Special Rapporteur further participated in a conference on "Islam and Human Rights" organized by the New York-based Lawyers Committee for Human Rights (London, 15-17 October 1997) and was invited to address the Wilton Park Conference on "The United Nations in the Twenty-First Century" (London, 14-16 November).

23. The Special Rapporteur was called as an expert before the Special Commission on Rwanda of the Belgian Parliament (Brussels, 16 April 1997). He also acted as a resource person in a regional training seminar on human

rights reporting organized by the International Training Centre of the International Labour Organization in Turin (Antananarivo, 7-12 December 1997).

24. The Special Rapporteur gave several newspaper, radio and television interviews and participated in a British television production on his mandate for children from 14 to 17 years old. Moreover, he attended a conference for Le Monde Diplomatique organized by Le Carrefour de la Pensée (Le Mans, France, 12-14 December 1997) on the crisis in the Great Lakes Region of Africa.

25. The Special Rapporteur was pleased to note the publication in 1997 of a revised version of Human Rights Fact Sheet No. 11, entitled Extrajudicial, Summary or Arbitrary Executions.

III. SITUATIONS INVOLVING VIOLATIONS OF THE RIGHT TO LIFE

A. Capital punishment

26. In its resolution 1997/61, the Commission on Human Rights requested the Special Rapporteur to continue monitoring the implementation of existing international standards on safeguards and restrictions relating to the imposition of capital punishment, bearing in mind the comments made by the Human Rights Committee in its interpretation of article 6 of the International Covenant on Civil and Political Rights, as well as the Second Optional Protocol thereto.

27. In this context, the Special Rapporteur transmitted 43 urgent appeals on behalf of 78 identified persons as well as on behalf of groups of unidentified persons to the Governments of the following countries: Bahamas (1), China (1), Democratic Republic of the Congo (2), Egypt (1), Gambia (1), Guatemala (1), India (1), Iran (Islamic Republic of) (6), Iraq (1), Jamaica (1), Jordan (1), Kazakhstan (1), Malaysia (1), Rwanda (1), Singapore (1), Turkmenistan (2), Ukraine (2), United Arab Emirates (1), United States of America (11), Viet Nam (1) and Yemen (1). The Special Rapporteur also sent urgent appeals to the Palestinian Authority (3) and the head of the Taliban Council (1).

28. For more detailed information on capital punishment, reference is made to section V.A of this report.

B. Death threats

29. The majority of urgent appeals transmitted by the Special Rapporteur were aimed at preventing loss of life after he had received reports informing him of situations where the lives and physical integrity of persons were feared to be at risk. The Special Rapporteur transmitted 65 urgent appeals to the Governments of Argentina (2), Belarus (1), Bolivia (2), Brazil (4), Burundi (1), Chile (1), Colombia (24), Costa Rica (1), Guatemala (7), Honduras (3), Iraq (2), India (4), Mexico (5), Peru (2), the Philippines (3), Turkey (2) and Venezuela (1). These urgent appeals concerned 88 identified persons and more than 1,800 unidentified persons as well as groups of persons such as inhabitants of certain municipalities, witnesses, indigenous groups, persons belonging to certain families and members of opposition parties.

Moreover, the Special Rapporteur transmitted allegations of a general nature to the Government of Mexico concerning death threats received by human rights defenders.

30. Persons on whose behalf the Special Rapporteur acted had received, directly or indirectly, death threats from State officials, paramilitary groups and private individuals cooperating with or tolerated by the State. Persons were said to have received death threats from State officials in Argentina, Bolivia, Brazil, Burundi, Chile, Colombia, Costa Rica, Guatemala, Honduras, India, Iraq, Mexico, the Philippines and Turkey. Death threats were allegedly received from paramilitary groups in Brazil, Colombia, Guatemala and India. Lastly, the Special Rapporteur addressed urgent appeals to the Governments of Argentina, Belarus, Bolivia, Colombia, Guatemala, Honduras, Mexico, the Philippines and Venezuela for persons who had allegedly received death threats from private individuals cooperating with or tolerated by the authorities.

31. The Special Rapporteur remains particularly concerned about the situation in Colombia where death threats against human rights activists, community activists and trade union leaders have become routine in recent years. The Special Rapporteur also notes with concern that he transmitted three urgent appeals to the Government of India, one on behalf of witnesses in a case of a disappeared person and two on behalf of persons who had cooperated with United Nations human rights bodies.

C. Deaths in custody

32. The Special Rapporteur transmitted allegations of the death in custody of 107 persons, of whom 89 were identified, to the Governments of the following countries: Algeria (1), Bahrain (2), Brazil (4), Cameroon (4), Chad (8), China (3), Colombia (2), Ecuador (3), Ethiopia (4), Gambia (1), Georgia (1), India (3), Israel (2), Kenya (4), Malawi (17), Mexico (8), Nepal (4), Pakistan (14), Peru (2), Sri Lanka (2), Tunisia (1), Turkey (8) and Venezuela (1); allegations were also sent to the Palestinian Authority (8). Allegations of a general nature regarding the occurrence of deaths in custody were transmitted to the Governments of Georgia and Nepal as well as to the Palestinian Authority.

33. In addition, the Special Rapporteur transmitted two urgent appeals on behalf of detained persons whose lives were alleged to be in danger. The Special Rapporteur transmitted one urgent appeal to Turkmenistan on behalf of a person who was reportedly imprisoned after an anti-government demonstration at the maximum security prison in Ashgabar alongside violent criminals, allegedly to put him deliberately at risk. The Special Rapporteur also sent an urgent appeal to Ethiopia on behalf of persons detained in what were alleged to be 23 secret detention centres in Deder district as well as some 300 persons, most of them farmers, held at Harrar Central Prison after he had received information regarding detainees being shot and killed in detention in Deder district.

34. The Special Rapporteur remains particularly concerned about the situation in Pakistan, as he continued to receive numerous reports of persons who were killed in the custody of police officials. He is also concerned

about the disturbing reports received regarding Ethiopia as well as about the situation in Chad, Turkey, and the territory under control of the Palestinian Authority.

35. The Special Rapporteur is compelled to note once more that, as a general rule, and not only in countries where a pattern of deaths in custody exists, there is very little indication of effective action by the State authorities to bring to justice those responsible for this type of violation of the right to life and to compensate the families of the victims.

D. Deaths due to excessive use of force by law enforcement officials

36. The Special Rapporteur transmitted allegations regarding violations of the right of life of 114 persons, of whom 51 were identified, to the Governments of the following countries: Bahrain (1), Bolivia (16), Brazil (9), Chad (5), Colombia (12), Ecuador (1), India (26), Iran (Islamic Republic of) (27), Lesotho (5), Mexico (5), Nepal (1), Romania (3), Spain (1), Venezuela (1) and Yemen (1). These included allegations of violations of the right to life as a consequence of excessive use of force against participants in demonstrations in Bahrain, Colombia, Ecuador, the Islamic Republic of Iran, Mexico, Nepal, Venezuela and Yemen. Allegations of a general nature relating to deaths due to excessive use of force were transmitted to Nepal and Venezuela.

37. The Special Rapporteur also transmitted urgent appeals to the Governments of Albania, Chad, the Democratic Republic of the Congo, India and Swaziland with the aim of preventing deaths due to excessive use of force by law enforcement officials. The Special Rapporteur appealed to the Government of India when he was informed that the government of the State of Tripura reportedly had issued a statement empowering the armed forces, including the Central Reserve Police Force and the Border Security Force, "to fire upon or otherwise use force even to the causing of death, after due warning of any person acting in contravention of the law or any order in force prohibiting the assembly of five or more persons or carrying of weapons". The Special Rapporteur transmitted an urgent appeal to the Government of Chad after he had been informed that the commander of the specialized security units of the National Gendarmerie had sent a telegram instructing all members of the nine departments of the Gendarmerie to proceed to the physical elimination of all thieves caught in the act.

38. The Special Rapporteur is particularly concerned about the situation in India where, according to numerous allegations received, security forces, including the Border Security Force and the Central Reserve Police Force, were responsible for numerous violations of the right to life, in particular in Manipur and in Jammu and Kashmir. The Special Rapporteur is further concerned about the situation in Bolivia and in Brazil.

E. Deaths due to attacks or killings by security forces, paramilitary groups or private forces cooperating with or tolerated by the State

39. The Special Rapporteur transmitted allegations of killings by security forces, by paramilitary groups or by private forces cooperating with or tolerated by the State which concerned 731 persons, of whom 449 were identified. They were transmitted to the Governments of Argentina (1), Brazil (18), Burundi (170), Cambodia (18), Chad (23), China (1), Colombia (239), Cuba (4), Cyprus (1), El Salvador (3), Ethiopia (1), Guatemala (7), Honduras (2), India (35), Indonesia and East Timor (24), the Islamic Republic of Iran (4), Iraq (4), Kenya (1), Mexico (17), Myanmar (8), Nepal (10), Nigeria (1), Pakistan (17), Panama (2), Papua New Guinea (24), Paraguay (15), Peru (1), the Philippines (3), Spain (1), Sri Lanka (10), Thailand (6), Togo (2), Turkey (15), Venezuela (10) and Yemen (1), as well as to the Palestinian Authority (2) and the head of the Taliban Council (30). Furthermore, he transmitted allegations of a general nature to the Governments of Brazil, Cambodia, El Salvador and Peru.

40. The Special Rapporteur transmitted allegations of deaths due to attacks by paramilitary groups to the Governments of Cambodia, Colombia, Mexico and Panama, and by private individuals cooperating with or tolerated by the State to the Governments of Colombia, Guatemala, Honduras, Mexico, Paraguay and the Philippines.

41. The Special Rapporteur remains extremely concerned about the situation in Colombia where attacks conducted by members of the army and paramilitary groups against those believed to cooperate with the guerillas have allegedly led to the deaths of many innocent civilians.

F. Violations of the right to life during armed conflicts

42. The Special Rapporteur remains extremely concerned about the high number of civilians and persons hors de combat killed during internal armed conflicts in all regions of the world. Many thousands of persons not participating in armed confrontations have lost their lives as a result of the use of indiscriminate or disproportionate force, the utilization of anti-personnel mines or the blockage of goods and services, including relief assistance, in countries such as Afghanistan, Colombia, the Congo, the Democratic Republic of the Congo and Sri Lanka.

43. In accordance with resolution 1997/61, in which the Commission urged the Special Rapporteur to draw to the attention of the United Nations High Commissioner for Human Rights such situations of extrajudicial, summary or arbitrary executions as were of particularly serious concern to him or where early warning might prevent further deterioration, the Special Rapporteur on 9 July 1997 informed the officer-in-charge of the Office of the High Commissioner for Human Rights of his serious concern with regard to the situation reigning in the Congo. According to reports received by the Special Rapporteur, confrontations between militias of President Pascal Lissouba and former President Denis Sassou Nguesso, which started on 5 June 1997, had led

to numerous victims as a result of indiscriminate shelling on residential areas of Brazzaville and summary executions of civilians and combatants taken as prisoners.

G. Expulsion, refoulement or return of persons to a country or place where their lives are in danger

44. The Special Rapporteur transmitted urgent appeals to the Governments of Angola, Malawi, Panama, Turkey and the United Republic of Tanzania on behalf of persons or groups of persons who were reportedly at risk of imminent extradition, refoulement or return to countries where there were serious grounds to believe that their lives were at risk.

45. One urgent appeal transmitted to the Government of the United Republic of Tanzania concerned Burundian refugees, the other some 100 Zairian nationals, some of them prominent members of President Mobutu's party and some known as political opponents or critics of the Alliance of Democratic Forces for the Liberation of Congo-Zaire. The urgent appeal transmitted to Turkey concerned an Iranian asylum seeker who reportedly entered Turkey illegally and was to be returned to the Islamic Republic of Iran within five days of arrival, despite the fact that several members of his family had been executed in Iran and he was being sought by the authorities. The urgent appeal sent to Malawi concerned some 765 Rwandese refugees and some 470 refugees from the Democratic Republic of the Congo who were allegedly in the process of being forcibly returned to their countries despite alarming reports of massive human rights violations. The urgent appeal which the Special Rapporteur transmitted to the Government of Panama was sent on behalf of 400 farmers and their families who were reportedly being returned to Colombia despite their lives allegedly being at risk.

H. Genocide

46. The Special Rapporteur continued to observe a great reluctance on the part of the international community to use the term "genocide", even when referring to situations of grave violations of the right to life which seem to match clearly the criteria contained in article II of the Convention on the Prevention and Punishment of the Crime of Genocide.

47. The Special Rapporteur remains extremely concerned about the situation in the Great Lakes region. The joint mission charged with investigating allegations of massacres and other human rights violations in eastern Zaire (now Democratic Republic of the Congo) since September 1996 noted in its report to the General Assembly (A/51/942, annex), with regard to the ethnic massacres whose victims were mostly Hutus from Burundi, Rwanda and former Zaire, that its preliminary opinion was that some of the alleged massacres could constitute acts of genocide and that an in-depth investigation in the territory of the Democratic Republic of the Congo could clarify this situation.

I. Deaths due to acts of omission

48. The Special Rapporteur received information on deaths which allegedly occurred due to authorities' failure to prevent mobs from carrying out

so-called "popular justice" in Guatemala and Mexico. The Special Rapporteur is aware that in many other countries hundreds of people were lynched or set on fire because they were suspected of theft. He is particularly concerned that in Ghana, Côte d'Ivoire and, more recently, Senegal persons, in particular foreigners, were reportedly killed by mobs after having been accused of "stealing a person's sexual organs" through the most simple physical contact such as shaking hands.

49. The Special Rapporteur transmitted an allegation to the Government of Mexico concerning three persons accused of murder who were killed on 1 January 1996 by a mob in Rio Chiquito. The Special Rapporteur also transmitted an allegation to the Government of Guatemala on behalf of four persons, including a clergyman, killed on 13 November 1996 by a mob in Momstenango, Totonicapan. In relation to this incident, the Special Rapporteur was informed that the police had mistaken them for robbers of a bus.

50. The Special Rapporteur is gravely concerned about the situation in Algeria where security forces reportedly in some cases did not intervene, either to protect those who were being killed or to arrest those responsible for the massacres, resulting in the deaths of hundreds of innocent civilians. According to information brought to the Special Rapporteur's attention, many massacres of civilians in Algeria have taken place around the capital at very short distances from security forces' barracks and outposts.

J. Impunity

51. Governments have an obligation to carry out exhaustive and impartial investigations into allegations of violations of the right to life, to identify, bring to justice and punish perpetrators, as well as to take effective measures to avoid the recurrence of such violations. The Special Rapporteur notes that in most of the countries where violations of the right to life were committed, perpetrators have not systematically been brought to justice. Moreover, in certain countries he notes a climate of impunity which leads to further violations of the right to life. In fact, the Special Rapporteur considers impunity to be the principal cause of the perpetuation and encouragement of human rights violations, including extrajudicial, summary or arbitrary executions.

52. Allegations relating to situations of impunity were transmitted to the Governments of Brazil, Colombia, Guatemala and Papua New Guinea.

53. For more detailed information on impunity, reference is made to section V.B of this report.

K. Rights of victims

54. The right of victims or their families to receive fair and adequate compensation within a reasonable period of time is both a recognition of the State's responsibility for the acts committed by its personnel and an expression of respect for the human being. Granting compensation presupposes compliance with the obligation to conduct investigations into allegations of violations of the right to life with a view to identifying and prosecuting the

alleged perpetrators. Compensation and other types of support or assistance provided to the victims' families before such investigations are initiated or concluded do not exempt Governments from this obligation.

55. The Special Rapporteur is concerned about the numerous reports he received which indicate that in many cases of violations of the right to life no compensation was provided. The absence of compensation to victims' families seems to be the corollary of impunity. The Special Rapporteur continues to regret that, despite his requests in letters transmitting alleged cases of extrajudicial, summary or arbitrary executions, very few States have provided him with information in this regard.

56. The Special Rapporteur also notes once more that neither of the two Security Council resolutions establishing international criminal tribunals for the former Yugoslavia and Rwanda contain provisions concerning compensation for victims or their families while individuals, Governments or organizations which suffered losses and damages as a direct result of Iraq's invasion and occupation of Kuwait may receive compensation from the United Nations Compensation Commission. The Special Rapporteur holds the opinion that the establishment of an international fund for reparation payments should be considered so as to allow for fair and adequate compensation to the victims' families in accordance with paragraph 20 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions.

IV. ISSUES REQUIRING THE SPECIAL RAPPORTEUR'S ATTENTION

A. Violations of the right to life of women

57. During the period under review, the Special Rapporteur took action on behalf of more than 80 identified women, including some female minors. The Special Rapporteur transmitted 15 urgent appeals on behalf of 26 women to the Governments of Argentina, Belarus, Chile, Colombia, Costa Rica, Guatemala, Honduras, Iraq and Mexico. In addition, the Special Rapporteur acted on 55 cases of violations of the right to life of women said to have occurred in Bolivia (2), Cambodia (10), Chad (2), China (1), Colombia (7), Ecuador (1), Guatemala (1), India (4), Indonesia and East Timor (1), the Islamic Republic of Iran (2), Mexico (4), Myanmar (2), Nigeria (1), Papua New Guinea (6), Peru (1), Spain (1), Sri Lanka (2), Thailand (2), Turkey (2), Venezuela (1) and the territory under control of the Palestinian Authority (2).

58. It should be noted that the figures mentioned above do not necessarily show the actual number of women on whose behalf the Special Rapporteur intervened. First, they reflect only those cases in which it was specifically indicated that the victim was female. Second, some allegations transmitted by the Special Rapporteur refer to groups of unidentified persons which likely included women. It is a fact that women and children are the main victims of armed conflict and civil unrest.

59. Most of the women on whose behalf the Special Rapporteur took action were women who received death threats or were killed in attacks or killings by security forces of the State or paramilitary groups. In Sri Lanka, several women had allegedly been gang-raped before being killed. The Special Rapporteur is particularly appalled at what seems to be deliberate targeting

of women and children by groups of killers in Algeria. He is also distressed by information brought to his attention according to which a pregnant woman accused of theft was killed upon arrest by gendarmes in Chad.

B. Violations of the right to life of minors

60. During the period under review, the Special Rapporteur took action on behalf of 53 minors. He transmitted four urgent appeals on behalf of 9 minors to the Governments of Colombia, the Islamic Republic of Iran, Mexico and the United States of America. The urgent appeal transmitted to Iran concerned 2 minors who had reportedly been sentenced to death for murder, while the urgent appeal sent to the United States concerned a minor, a South African national, who was reportedly facing the death penalty in Mississippi. The urgent appeals sent to Colombia and Mexico concerned minors whose lives were feared to be threatened. It should be noted that children were mainly threatened with death because of their link to an adult.

61. The Special Rapporteur transmitted alleged cases of violations of the right to life of minors to the Governments of Bolivia (3), Brazil (7), Cambodia (8), Chad (1), Colombia (2), El Salvador (2), Guatemala (1), India (3), Mexico (3), Nepal (1), Papua New Guinea (4), Sri Lanka (1), Turkey (4), Venezuela (3) and to the Palestinian Authority (1). These included children who had died in custody or as a result of excessive use of force as well as in attacks or killings committed by security forces or paramilitary groups. Moreover, allegations of a general nature relating to the killing of children by members of the police were transmitted to the Government of Brazil.

62. In countries such as Algeria, the Congo, the Democratic Republic of the Congo and Sri Lanka, children continued to be killed in the context of armed conflict and internal strife. The Special Rapporteur is distressed that many children were reportedly among the victims of massacres in the Democratic Republic of the Congo. The Special Rapporteur is also appalled at what seems to be deliberate targeting of children and women by groups of killers in Algeria. He further notes with grave concern that in Cambodia a group of six children aged between 2 and 8 were reportedly killed when a member of the "Special Military Region Forces" launched a rocket in the direction of the children.

C. The right to life and mass exoduses

63. During the period under review, the Special Rapporteur was informed of large-scale human rights violations, including violations of the right to life, which led to massive displacement of populations in Colombia, the Congo, the Democratic Republic of the Congo and Sri Lanka. In Colombia and Sri Lanka as well as in the Democratic Republic of the Congo it was further reported that refugees and internally displaced persons were victims of violations of the right to life. In addition, the Special Rapporteur was informed of violations of the right to life of refugees from Myanmar in Thailand. According to the source of the information, attacks by government troops and/or members of the Democratic Karen Buddhist Army, a Karen militia allegedly backed by the Government, on several camps of Myanmar refugees in Thailand led to several deaths.

64. In addition, the Special Rapporteur sent urgent appeals on behalf of several groups of refugees who were allegedly facing forcible return to their home countries despite the fact that their lives were reported to be at risk. He transmitted two urgent appeals to the Government of the United Republic of Tanzania and one to the Governments of Malawi and Panama (see para. 44).

D. Violations of the right to life of individuals carrying out peaceful activities in defence of human rights and fundamental freedoms

65. During the period under review, the Special Rapporteur transmitted urgent appeals on behalf of 31 persons carrying out peaceful activities in defence of human rights and fundamental freedoms requesting the Governments concerned to take the necessary measures to protect their right to life. The action undertaken by the Special Rapporteur was on behalf of human rights defenders threatened in the following countries: Argentina (1), Belarus (1), Bolivia (2), Chile (3), Colombia (9), Guatemala (4), Honduras (2), India (2), Mexico (2), Philippines (4) and Venezuela (1).

66. In addition, the Special Rapporteur transmitted allegations of violations of the right to life of 13 human rights defenders, including Ghulam Rasool Sheikh killed in India, Felipe Pablo Benítez killed in Paraguay and Mariela Lucy Barreto Riofano in Peru. The following 10 human rights activists were reportedly killed in Colombia: Alfredo Basante, Alvaro Nelson Suarez Gómez, Carlos Mario Calderón, Elsa Constanza Alvarado, Gerardo Estrada Yaspuesan, Helí Gómez Osorio, Jafeth Morales, Jorge Conde, Marco Antonio Nasner and Margarita Guzman Restrepo.

67. The Special Rapporteur continues to be concerned at the large scale on which threats against and violations of the right to life of human rights defenders are occurring in various countries in the world. The Special Rapporteur is particularly appalled at the situation in Colombia where human rights defenders seem to be one of the target groups for extrajudicial, summary or arbitrary executions and where measures aiming at their protection seem ineffective.

E. Violations of the right to life of persons exercising their right to freedom of opinion and expression

68. During the period under review, the Special Rapporteur took action on behalf of a wide variety of persons falling within this category, including journalists, members of political parties and trade unions, as well as participants in demonstrations. Allegations of violations of the right to life of 85 persons exercising their right to freedom of opinion and expression were transmitted to the Governments of the following countries: Argentina (1), Bolivia (10), Cambodia (12), Chad (3), China (1), Colombia (1), India (24), Indonesia and East Timor (1), Iran (Islamic Republic of) (4), Iraq (4), Mexico (16), Nepal (2), Pakistan (1), Spain (1), Tunisia (1), Turkey (1), Venezuela (1) and Yemen (1).

69. Moreover, the Special Rapporteur transmitted 17 urgent appeals on behalf of persons exercising their right to freedom of opinion and expression to the Governments of Argentina, Colombia, Guatemala, the Islamic Republic of Iran, Iraq, Peru, Turkmenistan and Swaziland.

F. The right to life and the administration of justice

70. During the period under review the Special Rapporteur undertook action on behalf of 29 persons involved in or related to the administration of justice, including prosecutors, judges, lawyers, plaintiffs and witnesses. The Special Rapporteur sent an alleged case of a violation of the right to life of a lawyer to the Government of Kenya. Further, he sent urgent appeals to the Governments of Argentina, Bolivia, Brazil, Colombia, India, the Islamic Republic of Iran, Mexico, Peru, the Philippines and Turkey with the aim of preventing loss of life of persons related to the administration of justice.

G. Violations of the right to life of persons belonging to national, ethnic, religious or linguistic minorities

71. The Special Rapporteur took action on behalf of a variety of persons belonging to national, ethnic, religious or linguistic minorities. The Special Rapporteur sent urgent appeals on behalf of 3 indigenous persons belonging to the Tolupan in Honduras, 140 indigenous families from the Suminao Clan in the Philippines, 2 persons who adopted the Baha'i faith in the Islamic Republic of Iran as well as members of the Guarani-Kaiowá indigenous community in Brazil, requesting the authorities to take the necessary measures to protect their right to life.

72. In addition, the Special Rapporteur acted on behalf of the following persons belonging to national, ethnic, religious or linguistic minorities whose right to life was reportedly violated: 8 indigenous persons in Colombia; 2 indigenous persons in Guatemala; 2 persons belonging to the Tolupan indigenous group in Honduras; 2 indigenous persons in Mexico; 3 persons belonging to the Suminao Clan in the Philippines; 1 person belonging to the Roma minority in Romania; several persons belonging to the Karen ethnic minority and 1 person belonging to the Karenni ethnic minority, all having fled from Myanmar to Thailand; 2 villagers belonging to the Shan ethnic minority in Myanmar.

H. Violations of the right to life and terrorism

73. The Special Rapporteur notes that violent acts committed by terrorist groups do not fall within the purview of his mandate which allows him to take action when perpetrators are believed to have a link with the State. However, the Special Rapporteur is aware of violence committed by armed opposition groups resorting to terrorism as a tactic of armed struggle against Governments. He is aware that violent acts committed by such groups have led to the killing of many civilians in particular in Algeria and Sri Lanka, as well as in Egypt, Israel, the territory under control of the Palestinian Authority and Turkey.

74. Once more, the Special Rapporteur expresses his repugnance at terrorists' acts which claim the lives of a large number of innocent

civilians. Although the Special Rapporteur understands the difficulties that the concerned Governments face in fighting terrorism, he notes with concern that in some countries Governments have adopted counter-insurgency strategies aimed at targeting those suspected of being members, collaborators or sympathizers of those groups, leading to further violations of the right to life. In this context, the Special Rapporteur emphasizes once more that the right to life is absolute and must be respected even under the most difficult circumstances.

I. Violations of the right to life of individuals who have cooperated with representatives of United Nations human rights bodies (reprisals)

75. During the period under review, the Special Rapporteur sent five urgent appeals on behalf of 13 persons who had cooperated with representatives of United Nations human rights bodies and who had received death threats, requesting the Government to take the necessary measures to protect their right to life. The urgent appeals were sent on behalf of the following persons: Firdous Asime, Director of the Institute of Kashmir Studies in India, who attended the forty-ninth session of the Sub-Commission on Prevention of Discrimination and Protection of Minorities in 1997; Ghulam Muhammad Bhat, a well-known Kashmir human rights activist who attended the 1995 session of the Sub-Commission; Gustavo Gallón Giraldo from Colombia who attended the fifty-third session of the Commission on Human Rights; judges and lawyers involved in the Kuratong Baleleng case, which was transmitted by the Special Rapporteur to the Government of the Philippines during 1996; Belén Torres Cárdenas and Raúl Emilio Ramos of the Asociación Nacional de Usuarios Campesinos - Unidad y Reconstrucción who attended several meetings at the Office of the High Commissioner for Human Rights in Geneva.

V. ISSUES OF SPECIAL CONCERN TO THE SPECIAL RAPPORTEUR

A. Capital punishment

76. The Special Rapporteur notes that the death penalty is an exception to the fundamental right to life and, as an exception, it must be interpreted restrictively. The Special Rapporteur believes that because of the irreparability of the loss of life, the imposition of a capital sentence must fully respect all restrictions imposed by the pertinent international instruments on this matter. In addition, the application of these restrictions must be guaranteed in each and every case. The Special Rapporteur undertakes action in cases of capital punishment in which international restrictions, which are analysed in the following paragraphs, are not respected. In such cases, the carrying out of a death sentence may constitute a form of summary or arbitrary execution.

77. As in previous years, the Special Rapporteur's action in response to allegations of violations of the right to life in connection with capital punishment continued to be guided by three main principles: the desirability of the abolition of the death penalty; the need to ensure the highest possible standards of independence, competence, objectivity and impartiality of judges and full respect of guarantees for a fair trial; and the observance of special restrictions on the application of the death penalty.

1. Desirability of the abolition of the death penalty

78. Although capital punishment is not yet prohibited under international law, the desirability of its abolition has been strongly reaffirmed on various occasions by United Nations organs and bodies in the field of human rights. In addition to those listed in his previous report (E/CN.4/1997/60, para. 75 (a)-(e)), the Special Rapporteur notes the adoption of Commission on Human Rights resolution 1997/12 of 3 April 1997 on the question of the death penalty. For the first time, the Commission on Human Rights adopted a resolution on capital punishment in which it called upon all States "that have not yet abolished the death penalty progressively to restrict the number of offences for which the death penalty may be imposed". It further called on States to consider suspending executions, with a view to abolishing the death penalty.

79. The Special Rapporteur also recalls that, on a regional level, new members of the Council of Europe are required to sign within one year, and ratify within three years of joining the organization, the Optional Protocol No. 6 to the European Convention, aimed at abolishing the death penalty, and are also required to place an immediate moratorium on executions.

80. The Special Rapporteur regrets that several countries which, despite legislation allowing for capital punishment, had not carried out death sentences in many years resumed executions during 1997. He was informed that in February 1997, Zambia carried out the first execution since 1989. According to the information received eight men were secretly executed at Mukobeko maximum security prison. Burundi was also said to have carried out its first executions since 1981, hanging six men in the grounds of the prison in Bujumbura.

81. Given that the loss of life is irreparable, the Special Rapporteur strongly supports the conclusions of the Human Rights Committee in its comments on article 6 of the International Covenant on Civil and Political Rights (see HRI/GEN/1/Rev.2 of 29 March 1966) and emphasizes that the abolition of capital punishment is most desirable in order to fully respect the right to life. In this context, he welcomes the fact that, on 3 July 1997, the President of Poland signed into law a new Penal Code abolishing the death penalty for all crimes.

2. Fair trial

82. In monitoring the application of existing standards relating to the death penalty, as he has been requested by the Commission on Human Rights since 1993, the Special Rapporteur has directed his attention in particular to trial procedures leading to the imposition of capital punishment. All safeguards and due process guarantees, both at pre-trial stages and during the actual trial, must be fully respected in every case, as provided for by several international instruments.

83. The Special Rapporteur wishes to reiterate that proceedings leading to the imposition of capital punishment must conform to the highest standards of independence, competence, objectivity and impartiality of judges and juries, in accordance with the pertinent international legal instruments. All

defendants facing the imposition of capital punishment must benefit from the services of a competent defence counsel at every stage of the proceedings. Defendants must be presumed innocent until their guilt has been proved beyond a reasonable doubt, in strict application of the highest standards for the gathering and assessment of evidence. In addition, all mitigating factors must be taken into account. In this context, the Special Rapporteur wishes to express once again his concern about the existence of laws, particularly those relating to drugs offences in countries such as Malaysia and Singapore, where the presumption of innocence is not fully guaranteed, as the burden of proof lies partially on the accused. Moreover, these laws, owing to their strict formulation, do not leave any discretion to the judge to personalize the sentence or to take into account mitigating circumstances, giving them no other option than the mandatory imposition of the death penalty once the conclusion is reached that the defendant is guilty.

84. The Special Rapporteur shares the view of the Human Rights Committee and believes that imposing a sentence of death upon the conclusion of a trial in which the basic fair trial standards, as provided for in article 14 of the International Covenant on Civil and Political Rights, were not ensured, constitutes a violation of the right to life, should the execution be carried out.

85. During the period under review, Egypt, India, Iraq, the Islamic Republic of Iran, Jordan, Kazakhstan, Rwanda, Ukraine, the United States of America and Yemen as well as the Palestinian Authority were reported to have imposed death sentences after proceedings in which the defendants did not fully benefit from the rights and guarantees for a fair trial contained in the pertinent international instruments. The Special Rapporteur is of the opinion that even in those cases where the law in force in a country is in accordance with fair trial standards as contained in international instruments, the application of these standards in each death penalty case has to be ensured. Particularly disturbing reports were received relating to the imposition and execution of death sentences in that part of Afghanistan under the de facto control of the Taliban movement. According to the information received, persons were sentenced to death by Islamic courts set up by the Taliban authorities which were reportedly composed of judges many of whom were virtually untrained in law. It was reported that such courts often decided many cases a day in sessions which might have taken only a few minutes. It was further reported that death penalties were sometimes imposed and executed on the orders of Taliban commanders or Taliban prison guards.

86. Furthermore, proceedings must guarantee the right of review of both the factual and legal aspects of the case by a higher tribunal, composed of judges other than those who dealt with the case at first instance. The defendant's right to seek pardon, commutation of the sentence or clemency must also be guaranteed. In this context, the Special Rapporteur was informed that in Georgia in several cases, including those of Irakli Dokvadze, Petre Gelbakhiani and Badri Zarandia, death sentences were passed by the Supreme Court of Georgia acting as a court of first instance with the official verdict said to record that the sentence was final and not subject to appeal. Moreover, the Special Rapporteur took action on behalf of persons facing

execution and whose right to appeal and/or to seek pardon or commutation of the sentence was not respected in the Bahamas, the Democratic Republic of the Congo and Turkmenistan.

87. A preoccupying issue that continues to be brought to the Special Rapporteur's attention concerns decisions by defendants who have been sentenced to death not to appeal to a higher jurisdiction or to request clemency or pardon, and to accept the imposition of the death penalty. In this context, the Special Rapporteur strongly shares the view expressed by the Economic and Social Council in its resolution 1989/64 of 24 May 1989 entitled "Implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty", in which the Council recommended that Member States provide for mandatory appeals or review with provisions for clemency or pardon in all cases of capital offence. The Special Rapporteur transmitted one urgent appeal on behalf of a person who had chosen to abandon his appeals in the United States.

88. The Special Rapporteur also remains concerned about the imposition of the death penalty by special jurisdictions. These jurisdictions are often set up as a response to acts of violence committed by armed opposition groups or in situations of civil unrest, in order to speed up proceedings leading to capital punishment. Such special courts often lack independence, since sometimes the judges are accountable to the executive, or are military officers on active duty. Time limits, which are sometimes set for the conclusion of the different trial stages before such special jurisdictions, gravely affect the defendant's right to an adequate defence. Limitations on the right to appeal are also of concern in the context of special jurisdictions. The Special Rapporteur was further informed that in Pakistan, death sentences imposed in trials before special courts for the suppression of terrorist activities reportedly fall short of international standards of fair trial insofar as they do not proceed from the presumption of innocence.

89. The Special Rapporteur is also concerned about the situation of foreigners being sentenced to death. He was informed that in the United States of America, more than 60 foreign nationals have been sentenced to death without having been informed of their right under the Vienna Convention to receive assistance from their consulate. He was also informed that in 1997, more than 70 foreign nationals have been executed in Saudi Arabia.

90. The Special Rapporteur recalls that in previous reports to the Commission on Human Rights and the General Assembly he referred to the 1993 judgement of the Privy Council of the United Kingdom of Great Britain and Northern Ireland, the supreme judicial instance for the member States of the Commonwealth, in which it was held that awaiting the execution of a death sentence for five years after it had been handed down constituted in itself cruel and inhuman punishment. Shortly before the finalization of this report, the Special Rapporteur was informed that, in October 1996, the Privy Council ruled that, in the Bahamas, it may be considered cruel or inhuman to execute a prisoner who has been on death row for more than three and a half years. According to the information received, the Privy Council was of the view that the five-year ruling was not to be regarded as a fixed limit applicable in all cases, but as a norm which may be departed from if circumstances so require.

In this regard, the Special Rapporteur has expressed concern, on several occasions, that such decisions might encourage Governments to carry out death sentences more speedily, which, in turn, might affect the defendants' rights to full appeal procedures. In this sense, he wishes to reiterate that this judgement should be interpreted in the light of the desirability of the abolition of the death penalty. To solve the problem of the anguish of awaiting execution on death row by executing the person faster is simply unacceptable.

3. Restrictions on the use of the death penalty

91. As noted in his previous report (E/CN.4/1997/60, para. 88), capital punishment is prohibited for juvenile offenders under international law. During 1997, the Special Rapporteur transmitted an urgent appeal on behalf of a juvenile, a South African national, who was reportedly facing a death sentence in the United States of America. The Special Rapporteur was subsequently informed by the Government that he was no longer facing capital punishment. In addition, the Special Rapporteur took action on behalf of two minors sentenced to death in the Islamic Republic of Iran. The Special Rapporteur was also informed that a 17-year-old was reportedly executed in Owerri, Imo State, south-east Nigeria, in July 1997. Reportedly, he was 15 at the time he committed the crime.

92. In this respect, the Special Rapporteur wishes to express his utmost concern about information according to which, since 1990, the Islamic Republic of Iran, Nigeria, Pakistan, Saudi Arabia, the United States of America and Yemen have executed prisoners who were under 18 years of age at the time of the crime. In this context, reports were received relating to the approval of a draft bill in Pakistan, the Child Offenders Bill, which maintains capital punishment for minors as of the age of 16.

93. The Special Rapporteur also took action on behalf of two mentally retarded persons on whom capital punishment was imposed in the United States. The Safeguards guaranteeing protection of the rights of those facing the death penalty stipulate that the death penalty shall not be carried out on persons who have become insane. In addition, in paragraph 1 (d) resolution 1989/64, the Economic and Social Council recommended that States further strengthen the protection of the rights of those facing the death penalty by eliminating the death penalty for persons suffering from mental retardation or extremely limited mental competence, whether at the stage of sentence or execution.

94. It is worth emphasizing again that article 6, paragraph 2, of the International Covenant on Civil and Political Rights provides that, "in countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes" and that in its comments on article 6, paragraph 91, the Human Rights Committee stated that the expression "most serious crimes" must be read restrictively to mean that the death penalty should be a quite exceptional measure. In addition, paragraph 1 of the Safeguards guaranteeing protection of the rights of those facing the death penalty, states that the scope of crimes subject to the death penalty should not go beyond intentional crimes with lethal or other extremely grave consequences. The Special Rapporteur concludes from this, that the death penalty should be eliminated for crimes such as economic crimes and

drug-related offences. In this regard, the Special Rapporteur wishes to express his concern at reports he received concerning the imposition of the death penalty for economic and/or drug-related offences in China, the Democratic Republic of the Congo, the Islamic Republic of Iran, Malaysia, Singapore and Viet Nam. The Special Rapporteur's attention was further drawn to reports relating to the situation in Yemen where many of the offences punishable by death are reportedly vaguely worded and could easily be misused to convict persons carrying out activities which amount to no more than the peaceful expression of their conscientiously held beliefs, including their political opinion.

B. Impunity

95. States have an obligation to conduct exhaustive and impartial investigations into allegations of violations of the right to life, to identify and bring to justice the perpetrators, to grant adequate compensation to the victims or their families and to take effective measures to avoid the recurrence of such violations. 1/

96. The Special Rapporteur reiterates that impunity remains the principal cause for the perpetuation of violations of human rights and particularly those of the right to life. The manner in which a Government reacts to human rights violations committed by its agents, through action or omission, clearly shows the degree of its willingness to ensure effective protection of human rights. Very often, statements and declarations in which Governments proclaim their commitment to respect human rights are contradicted by a practice of violations and impunity. The Special Rapporteur considers that even if in exceptional cases Governments may decide that perpetrators should benefit from measures that would exempt them from or limit the extent of their punishment, the obligation of Governments to bring them to justice and hold them formally accountable stands. 2/

97. Impunity has further been encouraged by problems related to the functioning of the judiciary, in particular its lack of independence and impartiality. In some countries there is no independent judiciary that could conduct investigations into violations of the right to life, while in others the justice system does not function in practice. Where the justice system does not function properly it is desirable that reforms be implemented to enable the judiciary to fulfil its functions effectively. In some cases, which warrant particular treatment because of their special nature or gravity, Governments may envisage establishing special commissions of inquiry, which must fulfil the same requirements of independence, impartiality and competence as judges in ordinary courts. The results of their investigations should be made public and their recommendations binding on the authorities. The Special Rapporteur is concerned that in some cases recommendations made by such commissions are not followed in practice, or do not fulfil the above-mentioned requirements and become tools to evade the obligation to undertake thorough, prompt and impartial investigations into violations of the right to life. The Special Rapporteur also remains concerned about the prosecution of members of the security forces before military courts, where they may evade punishment because of an ill-conceived esprit de corps.

98. During the period under review, the Special Rapporteur continued to receive information relating to impunity. With regard to the situation in Guatemala, it was brought to the Special Rapporteur's attention that security forces continued to interfere in the justice system, affecting its independence and contributing to impunity. According to the information received, the population has no confidence in the justice system, many violations of the right to life which occurred in 1996 not having been investigated and perpetrators not been brought to justice.

99. With regard to the situation in Colombia, the Special Rapporteur's attention was again drawn to reports relating to the impunity enjoyed by paramilitary groups which continued to commit systematic violations of the right to life with the acquiescence of members of the armed forces.

100. It was further brought to the Special Rapporteur's attention, that on the Papua New Guinean island of Bougainville a culture of impunity, created by poor discipline and a weak chain of command in the armed forces combined with an unwillingness to hold individuals responsible for their deeds, contributed to a continuation of killings on the island. The source of the information was reportedly aware of the thorough investigation of only one alleged violation of the right to life committed since 1989 and of no persons prosecuted for violations of the right to life.

101. The Special Rapporteur is distressed that impunity prevailing in the Democratic Republic of the Congo, especially in Kivu, and in the Great Lakes region as a whole has resulted in further cycles of violence.

C. Cooperation with the United Nations High Commissioner for Human Rights and with other United Nations bodies

102. The Special Rapporteur continues to accord great importance to cooperation with other United Nations bodies dealing with issues related to his mandate. This cooperation has taken the form of consultations, either on questions concerning the day-to-day operation of his mandate, or in the preparation of, and during, on-site visits. Thus, pursuant to resolution 1997/58 of the Commission on Human Rights, the Special Rapporteur participated, together with the Special Rapporteur on the situation of human rights in Zaire and a member of the Working Group on Enforced or Involuntary Disappearances, in a mission charged with investigating allegations of massacres and other human rights violations occurring in eastern Zaire (now the Democratic Republic of the Congo) since September 1996. The team, which did not receive authorization to enter eastern Zaire, as noted in paragraph 19 above, presented reports to the General Assembly in this regard.

103. Cooperation with other Special Rapporteurs, particularly with the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on the question of torture and country-specific rapporteurs, continued during 1997 in the form of joint urgent appeals. Further, the annual meeting of special rapporteurs, representatives, experts and chairpersons of working groups of the Commission on Human Rights, which was held in Geneva from 21 to 23 May 1997, was another opportunity for the various mechanisms of the Commission to discuss matters of common interest and concern.

104. During 1997, coordination with different United Nations procedures was strengthened. Information was exchanged with the Human Rights Committee and the Committee on the Rights of the Child on issues relating to the right to life. Contacts with United Nations field offices, including offices of the High Commissioner for Human Rights, have continued. During field missions, the Special Rapporteur cooperated in particular with the United Nations Development Programme, the Office of the United Nations High Commissioner for Refugees and United Nations information centres.

105. One of the aspects which the Special Rapporteur considers of utmost importance is his cooperation with the High Commissioner for Human Rights. The Commission on Human Rights, in its resolution 1997/61, urged the Special Rapporteur to draw to the attention of the High Commissioner such situations of extrajudicial, summary or arbitrary executions as were of particularly serious concern to him or where early action might prevent further deterioration.

106. Thus, on 9 July 1997, the Special Rapporteur transmitted a letter to Mr. Ralph Zacklin, officer in charge of the Office of the High Commissioner for Human Rights, expressing concern at the situation in the Congo, particularly since clashes between the militias of President Pascal Lissouba and former President Denis Sassou Nguesso were said to have caused a great number of victims.

107. Further, by letter dated 25 July 1997, the Special Rapporteur brought to the attention of the officer in charge of the Office of the High Commissioner for Human Rights information which he had received, according to which some 300 soldiers of the Alliance des Forces Démocratiques pour la Libération du Congo-Zaïre (AFDL) were deployed in Shabunda, South-Kivu, Democratic Republic of the Congo, to protect and ensure the repatriation of refugees to Rwanda. Fears had been expressed for the life and physical integrity of those refugees, who had been fleeing attacks by the AFDL since October 1996. The Special Rapporteur also informed Mr. Zacklin that he and the Special Rapporteur on the situation of human rights in the Democratic Republic of the Congo, had transmitted a letter to the United Nations High Commissioner for Refugees requesting her to take the necessary preventive measures to protect the life of these refugees. By letter dated 28 July 1997, Mr. Zacklin informed the Special Rapporteur that he would undertake all the necessary efforts in his contacts with the Government of the Democratic Republic of the Congo to transmit the Special Rapporteurs' concern.

108. UNHCR replied to the Special Rapporteurs' letter, confirming that the arrival of the soldiers had caused fear amongst the refugees in the Shabunda transit centre and in Katshungu and had prompted half of the residents of the transit centre to return to the forest in the days following the deployment. However, since the arrival of the soldiers, UNHCR, which maintained a presence in Shabunda, had not received reports of any harassment of the refugees by the soldiers. UNHCR informed the Special Rapporteurs that they would maintain a policy of continued vigilance in the Shabunda region and follow the developments.

109. The Special Rapporteur considers that coordination with the High Commissioner for Human Rights should be strengthened with regard to field

visits. He believes that special rapporteurs should be consulted before field offices of the High Commissioner for Human Rights are set up in countries of common concern. Such field offices, which are aimed at strengthening human rights mechanisms, should therefore include in their mandates the servicing of special rapporteurs. The Special Rapporteur also thinks that guidelines should be developed for the cooperation between mechanisms of the Commission on Human Rights and field offices, as well as for follow-up by the High Commissioner for Human Rights on special rapporteurs' recommendations.

VI. CONCLUDING REMARKS AND RECOMMENDATIONS

110. As in previous years, the Special Rapporteur is compelled to conclude that there is no indication that extrajudicial, summary or arbitrary executions have decreased. During the past year, the Special Rapporteur transmitted more than 960 alleged cases of violations of the right to life as well as 122 urgent appeals on behalf of 3,720 persons, in addition to allegations concerning groups of persons for which no number of individuals was known.

111. One of the most prevalent targets of extrajudicial, summary or arbitrary executions has continued to be persons involved in struggles such as those to prevent or combat racial, ethnic or religious discrimination, and to ensure respect for economic, social, cultural, civil and political rights, including rights to ancestral lands. In situations of internal armed conflict, up to 90 per cent of the victims were reported to be civilians, many of them women and children. Furthermore, United Nations personnel, humanitarian workers, journalists, members of political parties and trade unions, participants in demonstrations, displaced persons and persons belonging to minorities have been deliberately killed.

112. The Special Rapporteur is committed to correctly portray the situation of the right to life in all its manifestations falling within his mandate. The Special Rapporteur recognizes that over the years a growing awareness of his mandate has led to an increase in the information, albeit regionally unbalanced, brought to his attention. In particular, he regrets that very little information has been brought to his attention regarding the situation in many countries in Africa. At the same time, for some countries, and in particular Colombia, the amount of information regarding alleged violations of the right to life is so overwhelming that he thinks it is no longer possible to handle it in a meaningful manner through the transmission of individual cases and their follow-up.

113. The Special Rapporteur is constrained to conclude that, with the resources at his disposal, the effectiveness of his mandate is hampered and that his methods of work need to be adapted to bring them into line with scarce resources. The Special Rapporteur already decided to consider during the past reporting year only those alleged cases of extrajudicial, summary or arbitrary executions which occurred in 1995, 1996 and 1997. The failure of many Governments to provide him with a reply by responding to the questions posed in the letters accompanying the allegations further complicated the Special Rapporteur's task. In addition, and despite the fact that the Special Rapporteur sent some follow-up communications during the past year, he recognizes that in the absence of a database system and with thousands of

cases having accumulated over the past years, it has become impossible to consistently follow up alleged cases of violations of the right to life.

114. The Special Rapporteur notes with regret that some Governments have failed to cooperate with him. While some Governments have not responded to any of his communications over the past year or have provided replies without responding to the questions posed in his letters, others have refused to respond to further questions posed in follow-up communications. His dialogue with the Governments of Turkey, China and India over the past years have not resulted, as hoped, in invitations to visit their countries. Moreover, recommendations contained in reports on field visits have failed to become the starting point for a constant exchange of views with the Governments on how to improve further the respect for the right to life.

115. The Special Rapporteur is convinced that extrajudicial, summary or arbitrary executions can be prevented only if there is a genuine will on the part of Governments and the international community not only to enforce the safeguards and guarantees for the protection of the right to life of every person under its jurisdiction, but also to strengthen them further. The Special Rapporteur notes with regret that trends in an opposite direction seem to be emerging. Declarations of commitment to protection of the right to life are only effective if they are translated into practice. If the aim is the protection of the right to life, the emphasis must be on the prevention of violations of this supreme right and the rejection of impunity.

Recommendations

116. The international community should concentrate its efforts on the effective prevention of further human rights crises, including genocide, the methods of work of the Special Rapporteur, and on the implementation of existing standards for the respect for the right to life. Human rights issues cannot be considered as internal affairs, and the international community has a duty to remind States that do not respect international human rights standards of their obligations under international law. The international community should assist in the establishment of a coherent multifaceted system of prevention of conflicts that would embody a rapid intervention component to prevent the degeneration of situations where the threat of massive human rights violations exists. Such a system would not only involve the participation of United Nations organs and bodies but would also require the concerted efforts and full cooperation of all Governments as well as non-governmental organizations.

1. Capital punishment

117. States that have not ratified the International Covenant on Civil and Political Rights and, in particular, its Second Optional Protocol, are encouraged to do so. All States should bring domestic legislation in conformity with international standards. States that enforce their capital punishment legislation should observe all fair trial standards contained in the relevant international legal instruments, in particular in the International Covenant on Civil and Political Rights. In addition, Governments that continue to enforce such legislation with respect to minors and the mentally ill are particularly called upon to bring their domestic

legislation into conformity with international legal standards. States should consider the adoption of special laws to protect the mentally retarded, incorporating existing international standards.

118. States should provide in their national legislation a period of at least six months so as to allow a reasonable amount of time for the preparation of appeals to courts of higher jurisdiction and petition for clemency before a death sentence is executed. Such a measure would prevent hasty executions while affording defendants the opportunity to exercise all their rights. Officials responsible for carrying out an execution order should be fully informed of the state of appeals and petitions for clemency of the prisoner in question, and should not proceed to an execution if an appeal or other recourse procedure is still pending. Appeals for clemency should provide effective opportunities to safeguard lives.

119. Governments of countries in which the death penalty is still enforced are urged to deploy every effort that could lead to the restriction of its use with the aim of its abolition, the desirability of which has been affirmed by the General Assembly repeatedly as well as by the Commission on Human Rights in its resolution 1997/12. In accordance with the latter, Governments should consider the imposition of a moratorium on executions.

2. Death threats

120. State authorities should conduct investigations with respect to all instances of death threats or attempts against lives that are brought to their attention, regardless of whether a judicial or other procedure has been activated by the potential victim. Governments should adopt effective measures to ensure full protection of those who are at risk of extrajudicial, summary or arbitrary execution.

121. In circumstances where certain State authorities or sectors of the civil society perceive political dissent, social protest or the defence of human rights as a threat to their authority, the central government authorities should take action to create a climate more favourable to the exercise of those rights and thus reduce the risk of violations of the right to life. The Special Rapporteur encourages Governments to recognize publicly the legitimacy of and contribution made by human rights defenders.

3. Deaths in custody

122. All Governments should ensure that conditions of detention in their countries conform to the Standard Minimum Rules for the Treatment of Prisoners and other pertinent international instruments. Governments should also deploy efforts to ensure full respect for international norms and principles prohibiting any form of cruel, inhuman or degrading treatment.

123. Prison guards and other law enforcement personnel should receive training on the observance of the aforementioned norms in performing their duties. State agents should take into consideration the right to life of prisoners, especially in the course of controlling prison disturbances and preventing prison escapes. All deaths in custody should be investigated by a

body that is independent from the police or prison authorities. Governments could consider measures such as the obligatory videotaping of post mortem examinations or the taking of pictures of corpses.

124. Because of the magnitude of the problem, the Special Rapporteur requests the Commission on Human Rights to consider appointing a Special Rapporteur on conditions of detention and prison conditions, following the example set by the African Commission on Human and Peoples' Rights, which has recently nominated such a rapporteur. In addition, he requests the Commission on Human Rights to call for the rapid adoption of an optional protocol to the Convention against Torture with a view to establishing a system of periodic visits to places of detention.

4. Excessive use of force by law enforcement officials

125. All Governments should ensure that their security personnel receive thorough training in human rights issues, particularly with regard to restrictions on the use of force and firearms in the discharge of their duties. Such training should include, for instance, the teaching of methods of crowd control without resorting to lethal force. Every effort should be made by States to combat impunity in this field and to provide adequate compensation to victims' families.

5. Violations of the right to life during armed conflict

126. All States that have not yet done so are encouraged to ratify the four Geneva Conventions of 1949 and their two Additional protocols. The training of members of the armed forces and other security forces should include substantive instruction on the content of these instruments in addition to those dealing with human rights.

127. Governments of countries in which terrorist groups are active should ensure that counter-insurgency operations are conducted in conformity with human rights standards so as to minimize the loss of lives.

6. Imminent expulsion of persons to countries where their lives are in danger

128. Governments that have not yet ratified the Convention and the Protocol Relating to the Status of Refugees are called upon to do so. All Governments should at all times refrain from expelling a person in circumstances where respect for his or her right to life is not fully guaranteed. Refoulement of refugees or of internally displaced persons to countries or areas where respect for their right to life is not fully guaranteed, as well as the closure of borders preventing the escape of persons trying to flee a country, should at all times be prohibited. Whenever a country is faced with a massive influx of refugees the international community should provide necessary assistance.

7. Genocide

129. All Governments are encouraged to ratify the Convention on the Prevention and Punishment of the Crime of Genocide. The Special Rapporteur

calls on States to pay due attention to the stipulations in the Convention concerning the prevention of genocide. Concerned States, assisted by the international community, should take all necessary measures to prevent acts of communal violence from degenerating into large-scale killings that may reach the dimension of genocide. States in which acts of communal violence occur should do their utmost to curb such conflicts at an early stage, and to work towards reconciliation and peaceful coexistence of all segments of the population, regardless of ethnic origin, religion, language or any other distinction. Governments should at all times refrain from any propaganda or incitement to hatred and intolerance that might foment acts of communal violence or condone such acts and bring to justice perpetrators of such acts.

130. The Special Rapporteur pursuant to article VIII of the Convention on the Prevention and Punishment of the Crime of Genocide, encourages the State parties to the Convention to call upon the competent organs of the United Nations to take action in order to prevent and suppress acts of genocide.

131. The Special Rapporteur believes that a monitoring mechanism to supervise the implementation of the Convention on the Prevention and Punishment of the Crime of Genocide should be established.

132. The Special Rapporteur urges the international community and all concerned States to cooperate fully with the International Criminal Tribunal for the Former Yugoslavia and the International Tribunal for Rwanda, particularly by arresting and handing over suspects, so as to bring to justice as soon as possible those accused of the crime of genocide.

8. Acts of omission

133. Governments should adopt the necessary preventive and protective measures to ensure full enjoyment of the right to life to persons under their jurisdiction. Such measures could include requests for international assistance if Governments feel themselves unable to fulfil this obligation.

134. Governments should fight impunity for common crimes and bring to justice persons committing murder in the name of so-called popular justice. Governments should at no time allow acts of incitement to revenge that might lead to killings.

9. Impunity

135. All States should conduct exhaustive and impartial investigations into allegations of violations of the right to life, in all its manifestations, and identify those responsible. They should also prosecute the alleged perpetrators of such acts, while taking effective measures to avoid the recurrence of such violations. In accordance with principle 19 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, blanket amnesty laws prohibiting the prosecution of alleged perpetrators and violating the rights of victims should not be endorsed.

136. The Special Rapporteur believes that the following measures could be taken to combat the problem of impunity: (a) establishment of a permanent international criminal court, with universal jurisdiction over mass violations of human rights and humanitarian law; such an international criminal court would have to be bestowed with an adequate mandate and sufficient means to enable it to conduct thorough investigations and enforce the implementation of its decisions; and (b) adoption of a convention, similar to the Convention against Torture, which would provide domestic courts with international jurisdiction over persons suspected of having committed mass violations of the right to life; such a convention should also contain provisions for the allocation of compensation to victims' families.

137. The Special Rapporteur welcomes the developments and discussions on the draft code on crimes against the peace and security of mankind and the draft statute on the establishment of an international criminal court and reiterates his call to the General Assembly to adopt them as soon as possible.

10. Rights of victims

138. All States should include in their national legislation provisions that allow for adequate compensation and facilitate access to judicial remedies to families of the victims of violations of the right to life in accordance with the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, recommended by Economic and Social Council resolution 1989/65 of 24 May 1989. States should endorse the principles set out in the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by the General Assembly in its resolution 40/34 of 29 November 1985, and incorporate them in their national legislation. Compassion, respect and justice being the rationales for victims' rights, victims have no right to retaliation, nor should the duty of the State to provide justice be privatized.

Notes

1/ See the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, recommended by the Economic and Social Council in resolution 1989/65, as well as the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. Also, the Human Rights Committee has stated, both in its General Comments on article 6 of the International Covenant on Civil and Political Rights and in a number of decisions, that States parties are required to investigate all human rights violations, particularly those affecting the physical integrity of the victim; to bring to justice those responsible; to pay adequate compensation to the victims or their families; and to prevent the recurrence of such violations.

2/ See paragraph 19 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, which states, in part, that "In no circumstances ... shall blanket immunity from prosecution be granted to any person allegedly involved in extra-legal, summary or arbitrary executions".